

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CORY LEE THEIS,

Plaintiff-Appellee,

v

LAMAR MILLER and MARK ALLEN,

Defendants-Appellants.

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UNPUBLISHED

June 17, 2004

No. 246197

Washtenaw Circuit Court

LC No. 00-000575-NO

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Defendants appeal as of right the order denying their motion for summary disposition under MCR 2.116(C)(7), based on a claim of governmental immunity. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

According to the allegations in plaintiff's complaint, plaintiff was injured in an incident at Maxey Boys Training Center. Defendants were employees of the training center, and plaintiff was housed at the center. Plaintiff alleged that defendants decided the residents should engage in physical combat, and ordered them to bring mattresses into the TV room. The physical matches were not supervised, and defendants encouraged the residents to injure their opponents. While engaged in these activities, plaintiff was flipped onto his head by another resident, and suffered a fractured neck. Plaintiff alleged that defendants then failed to obtain medical attention for his injuries, and plaintiff was dragged or carried back to his room.

A motion for summary disposition is reviewed de novo to determine if the moving party is entitled to judgment as a matter of law. *Sewell v Southfield Pub Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). In reviewing a motion under MCR 2.116(C)(7), a court must consider all documentary evidence submitted by the parties. However, the contents of the complaint must be accepted as true unless specifically contradicted by the affidavits or other appropriate documentation submitted by the movant. *Id.* In this case, no evidence was submitted with defendant's motion. As a result, the allegations within the complaint were accepted as true for purposes of deciding the motion.

MCL 691.1407(2) provides that an employee of a governmental agency is immune from tort liability if the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. As used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

To avoid governmental immunity, the employee's conduct must be the proximate cause of the injury, and not merely a proximate cause. *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). The proximate cause is the most immediate, efficient, direct cause preceding the injury. *Id.*

Given the facts alleged in the complaint, a reasonable juror could find that defendants' actions were the proximate cause of the injury. The injury may have been proximately caused by the use of mattresses that allowed plaintiff's neck to strike the floor, rather than the actions of plaintiff's opponent. Plaintiff also alleged that defendants actively encouraged the participants to injure each other, and ordered the matches to take place. In addition, defendants were allegedly directly responsible for the denial of medical treatment after plaintiff suffered his initial injury. Defendants' actions, as alleged in the complaint, appear to be the only proximate cause of any injury that resulted from the denial of treatment.<sup>1</sup>

Affirmed.

/s/ Janet T. Neff  
/s/ Brian K. Zahra  
/s/ Christopher M. Murray

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<sup>1</sup> We note, as did the trial court, that discovery may reveal facts different than those alleged in the complaint.